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November 20, 2002

TO: Each Supervisor

FROM: James A. Noyes
Director of Public Works

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT STATUS REPORT

NPDES Permit Appeal Status

In our memorandum dated January 3, 2002 (copy attached), we indicated that the County of Los Angeles and several cities have significant concerns with some elements of the NPDES Stormwater Permit that was adopted by the Regional Water Quality Control Board on December 13, 2001. On January 11, 2002, the County filed an administrative appeal of the permit to the State Water Resources Control Board on several issues. Five other appeals were filed representing 49 cities, the Building Industry Association, the Los Angeles Economic Development Corporation, Playa Capital, and the Western States Petroleum Association. The County appealed seven specific items, two of which, we considered critical. The deadline for the State Board to respond has been extended until December 7, 2002, with the consent of all parties.

The County and the City of Los Angeles had been negotiating the permit appeals with the Regional Board and the environmental community for several months. The other cities were represented in the negotiations by the Chair of the Executive Advisory Committee. The environmental advocates were represented in the negotiations by attorneys from NRDC, the BayKeeper, and Heal the Bay. The City of Los Angeles, County, and the Regional Board had reached tentative agreement on the two most critical items in the appeal: receiving water limitations language and bringing Total Maximum Daily Loads (TMDLs) into the permit to the maximum extent practicable (MEP).

Our tentative agreement provided a "safe harbor" for municipalities in the receiving waters limitations language. "Safe Harbor" means that permittees are considered to be in compliance with the permit as long as they implement the Stormwater Quality

Management Plan and comply with permit programs to the MEP. In contrast, the adopted permit is open ended with respect to the level of effort necessary to comply and prohibits discharges from the storm drain system that exceed water quality standards. Therefore, costs could escalate rapidly if the Regional Board took an extreme stand on compliance or citizen suits were filed over prohibited discharges of pollutants.

The environmental advocates were extremely displeased with the tentative settlement. Some cities were comfortable with the proposed settlement; others were concerned that we had not negotiated sufficient "safe harbor" and that other issues important to them remained unresolved.

Subsequent to reaching tentative settlement with the Regional Board, the State Board intervened, inviting all appellants, the Regional Board, and the environmental advocates to meet and confer on September 24. They restricted appellant representation to six. One person for each appeal filed.

On September 23, we met with all appellants to determine who would attend the State Board meeting and to unify our position on all the issues. We were able to accomplish that difficult task. The language the City of Los Angeles and the County had negotiated on receiving waters limitations and MEP was edited to provide a more explicit "safe harbor." The City and County agreed to support the edits.

The meeting with the State Board, represented by Board members Art Baggett and Richard Katz, was held. At the end of the day, little had been accomplished. The environmental advocates spent most of the time trying to roll back our previous progress with the Regional Board. However, at the end of the day, they indicated that they might be inclined to compromise on the "safe harbor" language if in return the TMDL process was accelerated. A follow-up meeting was scheduled for October 10, 2002.

The October meeting was spent reviewing a compromise proposal from the environmental advocates, which the State Board representatives seemed to support. The environmental advocates' proposal was far more onerous to the appellants than the conditions being appealed and was, in our opinion, a step backward rather than an attempt at compromise. Therefore, little progress was made but another meeting was scheduled for November 12, 2002. The appellants developed a new joint counterproposal to present for consideration as did the environmental advocates.

At the November meeting, the appellants proposal was set aside by the State Board representatives who chose to work off of the environmental advocates' draft. Working off that draft, language was developed which was generally acceptable to all present except the Coalition of Practical Regulation (CPR) representatives. It was agreed that

we would all take a second look at the draft changes and get back to the Regional Board's attorney with our comments by Monday, November 18.

We have not responded and have let all parties know we need more time. The CPR cities and the environmental advocates also have not responded to date. We will be meeting with the CPR cities, the environmental advocates, and others to see if we can reach a reasonable consensus position. The CPR cities have been opposed to all proposals to date and have not offered any alternative language the Regional Board, State Board, or the environmental advocates find acceptable. The CPR cities are holding out for sweeping changes in the permit. Key environmental advocates not represented at the November 12 meeting appear to strongly oppose the draft language.

In the meantime, the State Board has requested that the hearing on the appeals be further delayed until March 2003 to accommodate negotiations. The County is in agreement. We believe that future meetings will be held by the State Board in order to resolve the appeals.

Alternative Permit

The Building Industry Association, the CPR, and others have drafted an "alternative permit" and have asked several municipalities to review and support it as a replacement for the adopted NPDES Permit. Several of your offices have been approached by the proponents of the alternative permit. We recently polled the cities and determined that the proponents have not made all of them aware of the alternative permit, coastal cities in particular. Reactions of the cities to the concept of supporting the alternative permit is mixed.

We have reviewed the alternative permit (see attached matrix) and found that it addresses all the concerns we raised in our appeal as well as multiple other issues. Most significantly, the alternative permit reintroduces the safe harbor language of the previous NPDES permit. Also, the alternative permit does not require permittees to inspect facilities that are the responsibility of the State, and it removed the requirement to develop numeric criteria for peak flow control from new development. It also relieves the Flood Control District from multiple reporting requirements.

The alternative permit deletes the provision for incorporating TMDLs into the permit, a very significant change which leaves open the procedure for implementing and enforcing TMDLs.

The alternative permit reduces many of the permit requirements to a level that is less stringent than the adopted permit. Many of the reduced requirements benefit municipalities, others benefit the development and construction industries. However, if

the alternative permit were to replace the adopted permit, the required programs would still be effective in improving water quality though less so than the adopted permit. The most important factor to the cities and to Public Works is the certainty of the costs and level of effort required to comply.

In summary, the alternative permit would be beneficial to the County because it resolves all concerns we have with the current permit. These benefits would occur without significantly reducing the water quality improvements envisioned in the adopted permit provided a workable alternative method for TMDL implementation is developed. (Without TMDLs, implementation of a NPDES permit provides for slow progress in water quality improvement.)

It is perfectly clear to us that the environmental community and the Regional and State Boards are not amenable to accepting the alternative permit. In fact, the Regional Board has withdrawn their support of the tentative compromise settlement the County and the City of Los Angeles had reached with them on receiving waters limitations and MEP.

In Summary

We recommend that we continue to take a leadership role in working with the CPR cities, all other cities, the environmental community, the State and Regional Boards, and other stakeholders to reach a compromise solution. In the meantime, we continue to implement all required programs in the NPDES Permit on schedule. We will continue to keep your Board advised on the status of the appeals.

If you have any questions, please call me or your staff may contact Don Wolfe, Assistant Director, at (626) 458-4014.

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Attach.

cc: Supervisor Gloria Molina (Nicole Englund, Carrie Sutkin)
Supervisor Yvonne Brathwaite Burke (Chuck Bookhammer)
Supervisor Zev Yaroslavsky (Maria Chong-Castillo, Samantha Bricker)
Supervisor Don Knabe (Fred Guido, Curt Pedersen)
Supervisor Michael D. Antonovich (Conal McNamara)
Chief Administrative Office
Executive Office